

**Introduced by Senator Correa**

February 18, 2010

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An act to amend Sections 21337, 21337.1, 21670, 21671, 21672, 21674, 21675, 21676, 21677, 21679, 21680, 21681, 21682, 21683, 21685, and 22814 of, and to add Section 21671.5 to, the Government Code, relating to state retirement.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1139, as introduced, Correa. State retirement: benefit programs.

The Public Employees' Retirement Law (PERL) provides a comprehensive set of rights and benefits for various employees of the state and local agencies. That law also establishes the Public Employees' Retirement System (PERS) and sets forth the provisions for the delivery of benefits, including retirement benefits and an optional tax-deferred compensation program, to its members. Under that law, the retirement benefits of a retirement system member are based, in part, on the completed service credit and compensation received by that member.

This bill would make technical and clarifying changes to those provisions of law, including amendments that rename the current "deferred compensation program" as the "tax-preferred retirement savings program."

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 21337 of the Government Code is  
2     amended to read:

1 21337. (a) On an annual basis, the board shall transfer funds  
2 to separate supplemental state and school accounts, to fund the  
3 purchasing power protection allowance of retirees, survivors, and  
4 beneficiaries of state or school employers, respectively. The  
5 amounts transferred shall be the lesser of the following:

6 (1) The amount necessary to increase all monthly allowances  
7 paid by this system to retirees, survivors, and beneficiaries of state  
8 or school employers to 75 percent of the purchasing power of the  
9 initial monthly allowances.

10 (2) 1.1 percent of the net earnings on state or school member  
11 contributions, as determined by Section 20178.

12 (b) The funds transferred to the two separate supplemental  
13 accounts shall be utilized to increase all monthly allowances paid  
14 by this system to retirees, survivors, and beneficiaries of state and  
15 school employers, up to a maximum of 75 percent of the purchasing  
16 power, as determined by the board, of the initial monthly  
17 allowances, notwithstanding the benefit provided by Section 21328,  
18 that were received by every retired state or school member or  
19 survivor or beneficiary of a state or school member or retiree who  
20 was eligible to receive any allowance at the end of each fiscal year.  
21 Funds remaining in the state or school account after the payment  
22 of benefits under this section shall be transferred to the respective  
23 state or school employer accounts.

24 (c) *Annual adjustments in the purchasing power protection*  
25 *allowance shall be effective with the monthly allowance regularly*  
26 *payable on the first day of May, provided that in the first year after*  
27 *enactment of the act adding this subdivision, the purchasing power*  
28 *protection allowance adjustment to the monthly allowance payable*  
29 *on the first day of May shall also reflect an adjustment for the*  
30 *period from January 1 through April 30.*

31 SEC. 2. Section 21337.1 of the Government Code is amended  
32 to read:

33 21337.1. (a) ~~As of January 1, 2001, and annually thereafter,~~  
34 ~~all~~ All monthly allowances paid by the system to retirees of  
35 contracting public agencies, and to survivors and beneficiaries of  
36 members and retirees of those agencies, shall *annually* be increased  
37 to 80 percent of the purchasing power of the initial monthly  
38 allowance as determined by the board. *Adjustments in the*  
39 *purchasing power protection allowance shall be effective with the*  
40 *monthly allowance regularly payable on the first day of May,*

*provided that in the first year after enactment of the act amending this subdivision, the purchasing power protection allowance adjustment to the monthly allowance payable on the first day of May shall also reflect an adjustment for the period from January 1 through April 30.*

(b) Notwithstanding subdivision (a), retirees of contracting public agencies, and survivors and beneficiaries of members and retirees of those agencies, who receive a monthly allowance payable by this system shall also receive, on or after January 1, 2001, a one-time lump-sum payment in an amount equal to the difference, if any, between the purchasing power protection allowance paid between January 1, 2000, and December 31, 2000, and the purchasing power protection allowance that would have been payable if this section had been operative during that period.

(c) The cost of the increase in allowances paid pursuant to subdivisions (a) and (b) shall be paid from the same assets of the employer used in the determination of each employer contribution rate for each membership classification under which service was credited that affects the allowance calculation of the retirees, survivors, or beneficiaries.

SEC. 3. Section 21670 of the Government Code is amended to read:

21670. The board may establish ~~a deferred compensation program~~ *one or more tax-preferred retirement savings programs* for California public employees. ~~The program~~ *These programs* shall be made available to all employees of ~~an~~ *a participating* employer under procedures established by the board unless participation is subject to the terms of any memorandums of understanding between the employer and the employees.

SEC. 4. Section 21671 of the Government Code is amended to read:

21671. ~~The deferred compensation~~ *A tax-preferred retirement savings program established pursuant to Section 21670* may grant the maximum ~~tax-deferred~~ *tax-preferred* retirement savings ~~opportunities~~ available under current federal law, and may provide for employer as well as employee contributions. The program may include, but is not limited to, one or more of the following plans:

(a) A deferred compensation plan ~~qualified~~ *described* under Section 457 of Title 26 of the United States Code.

1 (b) ~~A tax-sheltered annuity-qualified~~ *program described* under  
2 Section 403(b) of Title 26 of the United States Code. Section 770.3  
3 of the Insurance Code shall not apply to the board for the purposes  
4 of contracting for those annuities.

5 (c) Any other form of ~~deferred compensation~~ *a tax-preferred*  
6 *savings* arrangement authorized by the provisions of Title 26 of  
7 the United States Code and approved by the board.

8 SEC. 5. Section 21671.5 is added to the Government Code, to  
9 read:

10 21671.5. The design and administration of a tax-preferred  
11 retirement savings program established pursuant to Section 21670  
12 shall conform with the applicable provisions of Title 26 of the  
13 United States Code.

14 SEC. 6. Section 21672 of the Government Code is amended  
15 to read:

16 21672. ~~The deferred compensation~~ *A tax-preferred retirement*  
17 *savings* program may include ~~any or all~~ *one or more* of the  
18 following components:

19 (a) Investment fund options for participants, as part of the  
20 deferred compensation program administered for state employees  
21 by the Department of Personnel Administration.

22 (b) Investment fund options for other participants.

23 (c) Annuity contracts on behalf of all participants.

24 (d) *Asset management, administrative, or related services.*

25 SEC. 7. Section 21674 of the Government Code is amended  
26 to read:

27 21674. (a) Investment fund options under subdivision (a) of  
28 Section 21672 shall be provided through a written interagency  
29 agreement between the board and the Department of Personnel  
30 Administration.

31 (b) ~~Participating~~ *Except for investments made pursuant to*  
32 *subdivision (a), participating* employers, ~~other than the state,~~ shall  
33 enter into a written contractual agreement with the board.

34 (c) ~~Employees~~ *Participants shall enter into contractual*  
35 *agreements that are required to effectuate participation in a*  
36 *tax-preferred retirement savings program, including employees*  
37 *participating under a program described in subdivision (a) or (b)*  
38 *of Section 21671, or any other program that provides for the*  
39 ~~deferred deferral of compensation program shall enter into or~~

1 written salary reduction agreements with their employers, for the  
2 purpose of making deferrals or for annuity contracts.

3 SEC. 8. Section 21675 of the Government Code is amended  
4 to read:

5 21675. All development and administration costs of ~~the~~  
6 ~~deferred compensation program~~ *tax-preferred retirement savings*  
7 *programs* shall be paid by employers and plan participants.

8 SEC. 9. Section 21676 of the Government Code is amended  
9 to read:

10 21676. The Public Employees' Deferred Compensation Fund  
11 is hereby established. Notwithstanding any other provision of law,  
12 the board may ~~retain~~:

13 (a) *Establish one or more accounts, trusts, group trusts, or*  
14 *similar vehicles within the fund.*

15 (b) *Retain a bank or, trust company, or similar entity to serve*  
16 *as repository of the fund, or of any account, trust, group trust, or*  
17 *other similar vehicle within the fund.* ~~The~~

18 *The board may also retain a bank or trust company to serve as*  
19 *a custodian for safekeeping, recordkeeping, delivery, securities*  
20 *valuation, investment performance reporting, or other services in*  
21 *connection with investment of the fund or of any account, trust,*  
22 *group trust, or similar vehicle within the fund.* ~~Notwithstanding~~

23 *Notwithstanding* Section 13340, all moneys in the fund are  
24 continuously appropriated, without regard to fiscal years, to the  
25 board to carry out the purposes of this ~~article~~ *chapter*.

26 SEC. 10. Section 21677 of the Government Code is amended  
27 to read:

28 21677. The Public Employees' Deferred Compensation Fund  
29 shall consist of the following sources and receipts and  
30 disbursements shall be accounted for as set forth below:

31 (a) ~~Premiums—Fees~~ determined by the board and paid by  
32 employers and plan participants for the cost of administering the  
33 ~~deferred compensation program~~ *tax-preferred savings programs*.

34 (b) Asset management fees as determined by the board assessed  
35 against investment earnings of investment options or other  
36 investments funds provided by the board to either the state or other  
37 public employers. Asset management fees shall be disclosed to  
38 ~~plan~~ participants.

39 (c) (1) Deferrals or contributions to be paid monthly by  
40 participating employers or ~~plan~~ participants for investment by the

1 board pursuant to this article. The moneys shall be deposited in  
2 ~~the investment corpus account~~ *appropriate account, trust, group*  
3 *trust, or similar vehicle* within the Public Employees' Deferred  
4 Compensation Fund, and invested in accordance with the fund  
5 option or fund selected by the ~~plan~~ participants.

6 ~~(1)–~~

7 (2) Deferrals or contributions paid by a contracting agency shall  
8 be paid through an electronic funds transfer method prescribed by  
9 the board. This payment requirement is effective upon declaration  
10 by the board.

11 ~~(2)–~~

12 (3) A contracting agency that is unable, for good cause, to  
13 comply with paragraph ~~(1)~~ (2), may apply to the board for a waiver  
14 that allows the agency to pay in an alternate manner as prescribed  
15 by the board, but not by credit card payment.

16 (d) Disbursements to ~~plan participants~~ shall be paid from ~~a~~  
17 ~~disbursement account~~ *the appropriate account, trust, group trust,*  
18 *or similar vehicle* within the Public Employees' Deferred  
19 Compensation Fund, in accordance with *the provisions of this*  
20 *chapter, the documents and instruments governing the*  
21 *tax-preferred retirement savings program, and current federal law*  
22 *pertaining to tax-deferred savings plans tax-preferred savings*  
23 *programs.*

24 (e) The board shall offer a savings account equivalent ~~plan~~  
25 *program* among those deferred compensation accounts made  
26 payable to ~~plan~~ participants.

27 (f) ~~Income, of whatever nature, earned~~ *Net earnings* on the  
28 Public Employees' Deferred Compensation Fund shall be credited  
29 to the appropriate account, *trust, group trust, or similar vehicle.*  
30 Participant accounts shall be individually posted to reflect net asset  
31 value for each fund in which the participant invests.

32 (g) The board has the exclusive control of the administration  
33 and investment of the Public Employees' Deferred Compensation  
34 Fund.

35 SEC. 11. Section 21679 of the Government Code is amended  
36 to read:

37 21679. The officers and employees of this system shall  
38 discharge their duties with respect to the ~~deferred compensation~~  
39 ~~plan tax-preferred retirement savings program~~ solely in the interest  
40 of the ~~plan~~ participants in the following manner:

1 (a) For the exclusive purpose of providing—~~deferred~~  
2 ~~compensation to plan~~ *tax-preferred retirement savings to*  
3 participants and defraying reasonable expenses of administering  
4 the ~~plan~~ *program*.

5 (b) In the selection of investment options with the care, skill,  
6 prudence, and diligence under the circumstances then prevailing  
7 that a prudent person acting in a like capacity and familiar with  
8 those matters would use in the conduct of an enterprise of a like  
9 character and with like aims.

10 (c) By diversifying the investment options available to  
11 participants ~~of the plan~~ so as to minimize the risk of large losses  
12 and by using reasonable diligence to accurately inform all  
13 employees and participants as to all ~~plan~~ options.

14 (d) In accordance with the documents and instruments governing  
15 the plan insofar as those documents and instruments are consistent  
16 with this ~~article~~ *chapter*.

17 SEC. 12. Section 21680 of the Government Code is amended  
18 to read:

19 21680. Except as otherwise provided by law, the officers and  
20 employees of this system shall not engage in a transaction with  
21 regard to a ~~deferred compensation plan~~ *tax-preferred retirement*  
22 *savings program* if they know or should know that the transaction  
23 constitutes, directly or indirectly, any of the following:

24 (a) The sale, exchange, or leasing of any property from the ~~plan~~  
25 *program* to a participant ~~in the plan~~ for less than adequate  
26 consideration, or from a participant ~~in the plan~~ to the plan for more  
27 than adequate consideration.

28 (b) The lending of money or other extension of credit from the  
29 plan to a participant in the ~~plan~~ *program* without the receipt of  
30 adequate security and a reasonable rate of interest, or from a  
31 participant ~~in the plan~~ to the ~~plan~~ *program* with the provision of  
32 excessive security or an unreasonably high rate of interest.

33 (c) The furnishing of goods, services, or facilities from the ~~plan~~  
34 *program* to a participant ~~in the plan~~ for less than adequate  
35 consideration, or from a participant ~~in the plan~~ to the ~~plan~~ *program*  
36 for more than adequate consideration.

37 (d) The transfer to, or use by or for the benefit of, a participant  
38 ~~in the plan~~ of any assets of the ~~plan~~ *program* for less than adequate  
39 consideration.

SEC. 13. Section 21681 of the Government Code is amended to read:

21681. The officers and employees of this system shall not do any of the following:

(a) Deal with the assets of the ~~plan~~ *program* in their own interest or for their own account.

(b) In their individual or in any other capacity, act in any transaction involving the ~~plan~~ *program* on behalf of a party, or represent a party, whose interests are adverse to the interests of the ~~plan~~ *program* or the interests of the participants ~~in the plan~~.

(c) Receive any consideration for their personal account, or any gift, from any party dealing with the ~~plan~~ *program* in connection with a transaction involving the assets of the ~~plan~~ *program*.

SEC. 14. Section 21682 of the Government Code is amended to read:

21682. This chapter shall not be construed to prohibit officers and employees of this system from participating in ~~the deferred compensation plan~~ *a tax-preferred retirement savings program*, on the same terms as other state employees or participants.

SEC. 15. Section 21683 of the Government Code is amended to read:

21683. This system may require an investment manager or recordkeeper ~~contracted under contract~~ with, or appointed by, this system be subject to the duties set forth in Section 21679.

SEC. 16. Section 21685 of the Government Code is amended to read:

21685. Notwithstanding any other provision of this part, the following definitions govern the construction of this chapter:

(a) "Participating employer" means any California public agency, including, but not limited to, any office of the county superintendent of schools, school district, community college district, or public agency defined by Section 20056 *that has elected to contract for a tax-preferred retirement savings program for any or all of its employees*.

(b) "Employer" means any city, county, city and county, district, school district, community college district, county superintendent of schools, and other public authority or body within this state.

(c) ~~"Plan participant"~~ *"Participant"* means any person enrolled ~~in the deferred compensation~~ *a tax-preferred savings program* established by this chapter.



1 SEC. 17. Section 22814 of the Government Code is amended  
2 to read:

3 22814. (a) A judge who retires pursuant to Chapter 11  
4 (commencing with Section 75000) of Title 8, but is not yet  
5 receiving a pension, may continue his or her coverage and the  
6 coverage of any family members for the duration of the leave of  
7 absence, upon his or her application and upon assuming payment  
8 of the contributions otherwise required of the employer.

9 (b) (1) A judge who ~~retires~~ *leaves judicial office* pursuant to  
10 subdivision (b) of Section 75521 and has not attained 65 years of  
11 age may continue his or her coverage and the coverage of any  
12 family members upon assuming payment of the contributions  
13 otherwise required of the employer. The judge shall also pay an  
14 additional 2 percent of the premium amount to cover administrative  
15 expenses incurred by the system or the Department of Personnel  
16 Administration.

17 (2) An election to continue coverage under this subdivision shall  
18 be made within 60 days of permanent separation. A retired judge  
19 who cancels that coverage may not reenroll.

20 (3) Upon attaining 65 years of age, a retired judge who has  
21 continuous and uninterrupted coverage pursuant to this subdivision  
22 shall be entitled to the applicable employer contribution.